

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

THE ESTATE OF DEVAN THOMAS
VYBORNY, CHRISTOPHER A. VYBORNY,
Administrator; CHRISTOPHER VYBORNY
and JANICE VYBORNY, individually and the
marital community composed thereof,

Plaintiffs,

v.

THURSTON COUNTY, a municipal
corporation and/or a political subdivision of
the State of Washington, THURSTON
COUNTY 911 DISPATCH/CALL CENTER,
THURSTON COUNTY MEDIC ONE, JOHN
DOE 1-10, and JANE DOE 1-10, in their
individual capacities, and as employees of
THURSTON COUNTY, and AIRLIFT
NORTHWEST, a Washington corporation,
and JOHN ROE 1-10 and JANE ROE 1-10, in
their individual capacities and as employees
of AIRLIFT NORTHWEST,

Defendants.

NO. 09-05197-RBL

**DECLARATION OF GEOFFREY
M. GRINDELAND REGARDING
ATTORNEYS' FEES AND COSTS**

GEOFFREY M. GRINDELAND, testifies and declares as follows:

1. I am an attorney in the Mills Meyers Swartling law firm, counsel in this
action for Airlift Northwest. I am over eighteen years old and otherwise competent

DECL. OF GEOFFREY M. GRINDELAND RE ATTORNEYS'
FEES AND COSTS - 1
(No. 09-05197-RBL)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 to testify. I make this declaration based upon personal knowledge.

2 2. The purpose of this declaration is to support an application for an
3 award of attorneys' fees and costs.

4 3. I was the attorney primary responsibility for handling this case. My
5 firm charged Airlift Northwest's insurer \$210 per hour for my time. The hourly rate
6 charged was discounted from my standard hourly rate of \$230 in 2009 and \$240 in
7 2010.

8 4. I graduated from the University of Virginia School of Law in 2004, so I
9 am a senior associate attorney in my sixth year of practice. I have significant
10 experience relating to aviation law. I devote a large portion of my practice to
11 litigation involving aviation matters, including defending airlines, manufacturers,
12 and pilots in civil litigation. I am a former Navy pilot who flew both helicopters and
13 turboprop airplanes. I have earned airline transport pilot (airplane) and
14 commercial/instrument (helicopter) ratings and attained various military
15 designations, including instructor pilot and maintenance check pilot. I am also a
16 graduate of the five-week Aviation Safety Officer's Course on mishap prevention and
17 investigation at the Naval Postgraduate School and have managed aviation safety,
18 maintenance, training, standardization programs. Finally, I have also chaired the
19 King County Bar Association's Aviation Section. The hourly rate charged for my
20 time in this matter was the same or lower than the hourly rates of my peers at other
21 civil litigation firms handling aviation matters.

22 5. David Schoeggl, a shareholder at Mills Meyers Swartling, also
23 performed some work on this matter. David Schoeggl has 26 years of experience in
24

1 litigation, including many significant aviation matters, and he is a private pilot. His
2 hourly rate on this matter, \$280, was substantially discounted from his standard
3 hourly rate of \$360.

4 6. Vanessa Scott-Thorson, a summer associate between her second and
5 third years of law school, also performed a limited amount of research at an hourly
6 rate of \$150.

7 7. Sharlee Nichol, a highly-experienced paralegal at Mills Meyers
8 Swarling, assisted with discovery, investigation, and document organization tasks.
9 Her hourly rate was \$160, which was discounted from her standard hourly rate of
10 \$175.

11 8. My firm has been working on this matter for almost one year. Since
12 April 3, 2009, we have billed Airlift Northwest's insurer \$20,694.00 in attorneys' fees
13 and \$838.08 in costs, or a total amount of \$21,532.08.

14 9. As described in more detail below and as summarized in Exhibit A
15 attached hereto, \$7,151.31 of the total fees and costs were incurred performing work
16 that is likely to be useful in the event this action is re-filed by the plaintiffs and
17 \$14,049.77 of the total fees and costs relates to work that will be repeated or
18 unnecessary in the event the plaintiffs re-file.

19 10. Only \$7,151.31 of the total amount incurred was for work that is likely
20 to be useful if the plaintiffs re-file their lawsuit. This work involved discovery and
21 factual investigation, such as witness interviews and document review. It consisted
22 of \$6,153.00 for 29.3 hours of my time, \$784 for 4.9 hours of Sharlee Nichol's time,
23 \$47.39 for photocopies, and \$166.92 in expenses related to travel for witness
24

1 interviews.

2 11. At least \$14,049.77 of the total amount incurred was for work that will
3 be unnecessary or repeated in the event plaintiffs re-file their lawsuit. This work
4 included:

5 a. **Planning, Analysis, and client reporting.** Our client incurred
6 \$5,131 in fees relating to litigation planning, legal analysis, case
7 evaluation, and client reporting. It consisted of \$280.00 for 1.0 hour
8 of David Schoeggel's time, \$4,851.00 for 23.1 hours of my time, and
9 \$352.00 for 2.2 hours of Sharlee Nichol's time.

10 b. **Removal to federal court.** Our client incurred \$1,332.50 in fees and
11 costs relating to removal of this action from state court to federal
12 court, including time spent evaluating whether to remove, obtaining
13 the consent of codefendants, and preparing the notice of removal
14 and the verification of state court records. It consisted of \$861.00 for
15 4.1 hours of my time, \$350 for the filing fee, and \$121.50 for
16 messenger charges.

17 c. **Joint status report, initial disclosures, and extension/dismissal.**
18 Our client incurred \$4,265.58 in fees relating to scheduling and
19 holding our FRCP 26(f) conference, drafting and filing the joint
20 status report, drafting and serving initial disclosures, and
21 negotiating with plaintiffs' counsel regarding a proposed dismissal
22 and our offer to stipulate to an extension of time to join additional
23 parties. It consisted of \$3,801.00 for 18.1 hours of my time, and
24

\$432.00 for 2.7 hours of Sharlee Nichol's time.

d. **Pleadings and legal research.** Our client incurred \$2,606.69 in fees researching the bases for plaintiff, researching potential defenses, drafting an answer, and communicating with our clients regarding the same. It consisted of \$2,142.00 for 10.2 hours of my time, \$345.00 for 2.3 hours of Vanessa Scott-Thorson's time, and \$119.69 in costs for online legal research.

e. **Pleadings and legal research.** Our client incurred \$2,606.69 in fees relating to researching the bases for plaintiff, researching potential defenses, and drafting an answer. It consisted of \$2,142.00 for 10.2 hours of my time, \$345.00 for 2.3 hours of Vanessa Scott-Thorson's time, and \$119.69 in costs for online legal research.

f. **Experts.** Our client incurred \$714.00 in fees relating to selecting and interviewing potential experts. It consisted of 3.4 hours of my time.

12. The summary information in the preceding paragraph was compiled using contemporaneous time records containing more detailed descriptions of the work performed. In order to maintain the confidentiality of work product and attorney-client communications, the time records themselves have not been attached but are available for *in camera* review upon request.

13. All time billed was spent in dealing with the claims asserted in this action and was reasonable in light of the complexity of the issues and the amount in controversy.

14. In conclusion, and based on the above descriptions, these attorneys'

1 fees and costs are reasonable for the work done by Mills Meyers Swartling to defend
2 Airlift Northwest in this matter.

3 15. Airlift Northwest's insurer has been invoiced the full amount of all
4 such fees and costs.

5 SIGNED under the penalty of perjury under the laws of the United States this
6 22nd day of February 2010 at Seattle, Washington.

7 s/Geoffrey M. Grindeland

8 WSBA No. 35798

9 grindeland@mms-seattle.com

Exhibit A**Planning, analysis, and client reporting**

| | | | |
|------------|------------|------------|-----------------|
| Schoegg | 1.0 hours | \$280/hour | \$280.00 |
| Grindeland | 23.0 hours | \$210/hour | \$4,830.00 |
| Nichol | 2.2 hours | \$160/hour | <u>\$352.00</u> |

Subtotal: \$5,462.00**Removal to federal court**

| | | | |
|------------|-----------|------------|----------|
| Grindeland | 4.1 hours | \$210/hour | \$861.00 |
|------------|-----------|------------|----------|

Filing fee: \$350.00

Messenger charges: \$121.50**Subtotal: \$1,332.50****Joint status report, initial disclosures, and extension/dismissal**

| | | | |
|------------|------------|------------|------------|
| Grindeland | 18.1 hours | \$210/hour | \$3,801.00 |
| Nichol | 2.7 hours | \$160/hour | \$432.00 |

Conference call: \$32.58**Subtotal: \$4,265.58****Pleadings and legal research**

| | | | |
|---------------|------------|------------|------------|
| Grindeland | 10.2 hours | \$210/hour | \$2,142.00 |
| Scott-Thorson | 2.3 hours | \$150/hour | \$345.00 |

Online research: \$119.69**Subtotal: \$2,606.69****Experts**

| | | | |
|------------|-----------|------------|-----------------|
| Grindeland | 3.4 hours | \$210/hour | <u>\$714.00</u> |
|------------|-----------|------------|-----------------|

Subtotal: \$714.00**Total Requested: \$14,380.77****Factual investigation and discovery (not requested)**

| | | | |
|------------|------------|------------|------------|
| Grindeland | 29.3 hours | \$210/hour | \$6,153.00 |
| Nichol | 4.9 hours | \$160/hour | \$784.00 |

Photocopies: \$47.39

Mileage/car rental: \$166.92**Total Not Requested: \$7,151.31**

CERTIFICATE OF SERVICE

I certify that on February 22, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Washington using the CM/ECF system which will send notification of such filing to:

Dean L. D'Mellow
dmellowmk@yahoo.com


Jane Futterman
futterj@co.thurston.wa.us,olsenl@co.thurston.wa.us

Ronald Anthony Gomes
rongomes@psbls.com,ron@gomeslawfirm.com

David V. Klumpp
klumppd@co.thurston.wa.us,olsenl@co.thurston.wa.us

And I hereby certify that I have mailed by United States Postal Service the foregoing to the following non CM/ECF participants: N/A

Signed at Seattle, Washington on February 22, 2010.


Kendra Brown
Legal Assistant